

## China brings joint punishment to a new level

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#### In brief

- » China has updated its joint punishment system since its launch in 2014 against serious offenders in tax and customs.
- » Over thirty ministerial authorities have joined the forces to enhance cross-discipline punitive measures against serious tax / customs offenders.

Feedback

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**In detail**

China nails its colours to the mast in enforcing firmly joint punishment measures against serious tax and customs violation by the following high-powered legislative updates:

- Thirty four ministerial bodies collectively endorsed the joint penalty memorandum in December 2016 to agree on joint punishment against serious tax offenders, and thirty three endorsed another memorandum in March 2017 against serious customs offenders.
- State Administration for Taxation (SAT) updated its joint penalty regulations in April 2016 (Circular 24), to replace the last one issued in 2014 (Circular 41).

**1. Tax joint punishment**

**(a) Scope of serious tax offence**

The 2016 version (“Circular 24”) has re-defined the scope of serious tax offences, which are set at a much lower basis than its previous version, and has added VAT invoice fabrication to its scope (see table below).

Offence criteria	Circular 41 ( <i>Old</i> )	Circular 24 ( <i>New</i> )
Tax evasion	Reaching CNY 5 million and accounting for 10% of tax due	Reaching CNY 1 million and accounting for 10% of tax due
Tax overdue	Reaching CNY 5 million	Reaching CNY 1 million
False export tax refund filings	Reaching CNY 5 million	No minimum criterion
Improper VAT invoicing for cheating export tax refund / credit	Reaching CNY 10 million	No amount limitation
Improper issuance of ordinary VAT invoices	Reaching CNY 50 million in value accumulatively	Improper issuance of 100 ordinary VAT invoices or involving over CNY 400,000 in value
Invoice fabrication (printing, falsifying, faking invoices, fabricating security designs or stamps for invoices)	Not included	Newly added

Notably, one can observe that the overall criteria are tightened, especially there is no criteria set for some serious offences, which has reflected the central government’s determination in curbing serious violation.

**(b) Consequence of serious tax offences**

Taxpayers in serious tax offence will be disclosed publically (a.k.a. “blacklisted”) and subject to multi-authority punishments according to the 2016 memorandum concluded among the 34 authorities concerned. The types of punishment have been substantially increased from 18 to 28, which include, inter alia, the following:

- » Blacklisted taxpayers’ rating in tax will be downgraded to D, leading to the following consequences:
  - Subject to public disclosure of its tax data and the name of the persons-in-charge;
  - Subject to a limitation on the amount of VAT invoices it can purchase;
  - Subject to strict requirement on export tax refund application; and
  - Subject to more tax investigation / audit, etc.
- » Further, blacklisted taxpayers’ rating in foreign exchange administration will be downgraded to B, subject to a tighter administration in documentation review, application procedures, foreign exchange settlement, receipts and payments for trade.

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- » The persons in charge (legal representative and CFO, etc.) of the blacklisted enterprise will also be held liable in person for 18 types of penalty measures.



2. Customs joint punishment

Serious customs violators will be subject to a different set of joint penalty administration from that for tax violations, based on the memorandum signed by 33 government ministerial bodies on 29 March 2017.

Objective	Penalty measures
<p>Imposing joint penalty on discredited enterprises (and their person in charge) with serious violations in customs, e.g.</p> <ul style="list-style-type: none"> <li>• Smuggling;</li> <li>• Failure in customs filings;</li> <li>• Failure in duty payments;</li> <li>• Loss of contacts;</li> <li>• Fraudulent practices, etc.</li> </ul> <p>The 2017 memorandum has not re-defined the measurement for customs offences but makes reference to those defined by the customs rating regulations issued in 2014 (Customs Order 225).</p>	<p>By Customs:</p> <ul style="list-style-type: none"> <li>▪ Higher frequency of audits;</li> <li>▪ Focused review on import / export documents;</li> <li>▪ Focused supervision over processing trades;</li> </ul> <p>By other bodies:</p> <ul style="list-style-type: none"> <li>▪ Higher frequency of audits;</li> <li>▪ Focused review on export refund applications;</li> <li>▪ Restricted from leaving China;</li> <li>▪ Limited in obtaining export quota;</li> <li>▪ Restricted the persons in charge from taking up management positions in other companies;</li> <li>▪ Downgrading treatments in foreign exchange areas;</li> <li>▪ Restricted bidding in government and engineering projects;</li> <li>▪ Sharing of ratings with banking / insurance institutions; etc.</li> </ul>

WTS observation

China has its claws out in taking collaborative actions to ensure that serious offenders will pay a high price. Such a large number of government authorities signing in to the joint penalty collaboration is a testament to the central government’s solid conviction. The message is clear that serious violation in tax and customs will be dealt with not only within the two administrations, but across many others. The consequences can be very severe and detrimental to the companies or individuals concerned.

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